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BEFORE THE ARIZONA CORPORATION COMMISSION

02

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

2008 FEB -5 P 1: 25

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

FEB -5 2008

DOCKETED BY

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IN THE MATTER OF THE FORMAL
COMPLAINT OF SWING FIRST GOLF LLC
AGAINST JOHNSON UTILITIES LLC

DOCKET NO. WS-02987A-08-0049

AMENDED FORMAL COMPLAINT

Pursuant to the provisions of A.R.S. §§ 40-246 and 40-248, and A.A.C. R14-3-106(L), Swing First Golf LLC ("Swing First") hereby files its amended formal complaint ("Complaint") against Johnson Utilities LLC, dba Johnson Utilities Company ("Utility"), and requests that the Arizona Corporation Commission ("Commission") issue an order providing the relief requested herein.

A BACKGROUND - UTILITIES SERVICE AGREEMENT

On September 17, 1999, Utility, and various parties related to Utility, executed an Agreement Regarding Utility Service ("Utility Service Agreement") with Johnson Ranch Holdings LLC ("Holdings"), an affiliate of Sunbelt Holdings Management, Inc., an Arizona Corporation ("Sunbelt"). Exhibit A is a copy of the Utility Service Agreement.

On or about September 17, 1999, Holdings acquired, through Sunbelt, the 2,014-acre, master-planned community known as Johnson Ranch.

Utility holds a certificate of convenience and necessity ("CC&N") from the Commission to serve Johnson Ranch.

Among other things, Paragraph 9(a) of the Utility Service Agreement provides Holdings first right to purchase effluent from Utility to irrigate the Johnson Ranch Golf Courses:

Utility hereby grants Holdings and its successors and assigns the right to purchase the first effluent generated by Utility's treatment of wastewater collected within the

1 geographic area covered by Utility's Certificate, or Exchange Water (as hereinafter
2 defined), in an amount required to irrigate the Johnson Ranch Golf Courses.

3 Paragraph 9(b) of the Utility Service Agreement provides that: "The purchase price for
4 effluent sold to Holdings hereunder shall be as determined by the Commission." Utility's
5 current tariffed rate for effluent sales is \$0.62 per thousand gallons.

6 Paragraph 9(c) of the Utility Service Agreement defines Exchange Water and provides
7 Utility the right, at its sole discretion, to satisfy Holdings purchase in paragraph 9(a) by
8 providing either effluent, surface water, or groundwater.

9 Utility reserves the right to deliver the quantities of water that Holdings elects to
10 purchase pursuant to Paragraph 9(a) from any of the following sources: (i) effluent
11 from any wastewater treatment plant of Utility, (ii) any surface water available to
12 Utility, or (iii) groundwater (the foregoing items (i), (ii) and (iii) being hereinafter
13 referred to as "Exchange Water"). Election of such sources shall be at the sole
14 discretion of Utility.

15 On November 8, 2004, Swing First acquired The Golf Club at Johnson Ranch ("Golf
16 Club"). The Utility Services Agreement has been assigned to Swing First.

17 **II ALLEGATIONS**

18 **A OVERCHARGES FOR WATER DELIVERIES**

19 Utility has been generating and treating effluent within its certificated service area since
20 at least 2005. Utility's tariffed rate for effluent is \$0.62 per thousand gallons. However, despite
21 Swing First's right to the first effluent generated in the certificated service area, Utility has rarely
22 delivered effluent. Instead, it has delivered CAP water to Swing First and charged it \$0.83 per
23 thousand gallons. Further, when Utility has delivered effluent to Swing First, Utility has still
24 billed at \$0.83 per thousand gallons.

25 As discussed above, the Utility Service Agreement provides Utility the right to deliver
26 CAP water to Swing First, but if effluent is available, the CAP water is considered to be
27 Exchange Water, which is to be priced at the \$0.62 per-thousand-gallon-rate for treated effluent.
28 Instead, Utility has charged \$0.83 or more per thousand gallons for all delivered CAP water.

1 Exhibit B summarizes Swing First's metered usages by month. For 2006-2007, Utility
2 overbilled Swing First at least \$0.21 per thousand gallons for 152,459,000 gallons.¹ As a result,
3 Utility overcharged Swing First by more than \$32,000 during 2006-07.

4 Utility has refused to deliver copies of its bills or meter-reading records for 2004 and
5 2005, which makes it difficult to calculate the exact amount it overcharged as a result of its
6 failure to correctly bill Swing First. As shown on Exhibit B, Swing First estimates its monthly
7 usage for the 13 months it owned the Golf Club during 2004-05 to have been 10,734,792 gallons,
8 with each gallon inappropriately billed at the \$0.83 per-thousand-gallon rate. Thus, Swing First
9 estimates that Utility overcharged it more than \$29,000 during 2004-05.²

10 **B OVERCHARGES FOR MINIMUM BILL**

11 Utility's overcharges have not been limited to billing at the inappropriate water rate.
12 Utility has also overcharged Swing First for its minimum bills.

13 Utility has the option to deliver non-potable water from different services, but the Utility
14 Service Agreement requires that all deliveries should be priced at the effluent rate of \$0.62 per
15 thousand gallons. Thus, Utility needs only one meter to measure deliveries of non-potable water
16 to Swing First. However, in early 2006 Utility decided to separately meter CAP water and
17 treated effluent and began charging Swing First two monthly minimum bills. Utility certainly
18 can install more than one meter, but Swing First needs only one meter to measure Exchange
19 Water, and should pay only one monthly minimum charge, instead of the two minimums charged
20 by Utility.

21 Further, each month Utility has been basing its minimum bills on two six-inch meters,
22 thereby charging Swing First two minimum bills of \$900. The minimum bill for the installed
23 three-inch effluent meter should have been only \$270. Instead, Utility has been charging \$1800
24 or more per month for the minimum bills. As a result, since November 2004 Utility has
25 overcharged Swing First approximately \$45,000.³

¹ Exhibit B, p. 1.

² $(10,734,792 \text{ 1000-gal.}) \times (13 \text{ mo.}) \times (0.21/1000\text{-gal.})$

³ $[13 \times (\$900 - \$270)] + [24 \times (\$1800 - \$270)] = \$44,910$

1 In January 2008, Utility replaced Swing First's three-inch effluent meter with an eight-
2 inch meter. At that time Utility acknowledged that it had been, for more than two years,
3 charging Swing First for a 6" meter when in fact Swing First had only a 3" meter. Swing First
4 will be carefully reviewing its bills to see if Utility further increases its minimum-bill charge.

5 **C BILLING CREDIT**

6 In April of 2006 Swing First agreed to manage the Golf Club at Oasis ("the Oasis"),
7 wholly owned by Johnson International, in exchange for a water credit of 150 million gallons per
8 year to be provided by Utility. Swing First began managing the Oasis on May 1, 2006. Swing
9 First discontinued the Oasis management relationship on Nov 16, 2006, retroactive to October
10 31, 2006. During most of the six-month term of service, Utility effectuated the water credit by
11 not billing Swing First for water. In 2007, Johnson Utilities decided to reverse the 2006 credits
12 and now is improperly asking Swing First to pay for the water not billed in 2006.

13 The water credit for six months is 75 million gallons. At the effluent rate of \$0.62 per
14 thousand gallons, the value of the credit earned by Swing First is \$50,056.50.⁴

15 **D SUPERFUND TAX**

16 Swing First is billed each month for a Superfund "Tax" at the rate of \$0.0065/1000
17 gallons. Neither Utility's water nor its sewer tariffs authorize this charge.

18 Utility's sewer tariff does state the following:

19 In addition to all other rates and charges authorized herein, the Company shall
20 collect from its customers all applicable sales, transaction, privilege, regulatory or
21 other taxes and assessments as may apply now or in the future, per Rule R14-2-
22 608(D)(5).⁵

23 However, Rule R14-2-608(D)(5) only allows Utility to recover taxes based on revenue:

24 In addition to the collection of regular rates, each utility may collect from its
25 customers a proportionate share of any privilege, sales or use tax, or other imposition
26 based on the gross revenues received by the utility. (Emphasis added.)

⁴ See Exhibit B, p. 1.

⁵ Wastewater Tariff at Sheet 19. Similar language appears in its Water Tariff at Sheet 6.

1 The Superfund tax is based on usage, not revenue, so Rule R14-2-608(D)(5) does not authorize
2 Utility to collect the Superfund tax.

3 The Commission has previously ruled on this exact issue. The Commission clarified that
4 the cited rule does not authorize Utility to pass through volumetric charges. In Docket No. SW-
5 02987A-01-0795, Utility asked the Commission to clarify that Rule R14-2-608(D)(5) (the
6 corresponding rule for water utilities) provided tariff authority to pass through to its water
7 customers its Central Arizona Groundwater Replenishment District (“GRD”) Taxes. Like the
8 purported Superfund Tax, the GRD Tax was not based on sales revenue. The Commission
9 denied Utility’s request:

10 Staff determined that the GRD tax cannot be treated as a pass-through tax within the
11 Arizona Administrative Code R14-2-409.D.5 because it is not a “privilege, sales or
12 use tax” since GRD taxes are not based on sales revenue. Therefore, GRD taxes do
13 not fall within the scope of the Company’s current tariff.

14 ...

15 The Commission having reviewed the application and Staff’s Memorandum dated
16 January 31, 2002, concludes that the GRD tax is not the type of tax that can be
17 passed through within Arizona Administrative Code, R14-2-409.D.5 and is,
18 therefore, not included in the Company’s current tariff.⁶

19 As shown on Exhibit B, Utility illegally charged Swing First \$1,674.63 in 2006 and 2007 for
20 Superfund taxes. Based on estimated usage of 10,734,792 gallons per month for 13 months,
21 Swing First estimates that the illegal charge in 2004-05 was \$907.09.

22 **E TRANSACTION PRIVILEGE TAX**

23 Utility also appears to have regularly overcharged Swing First for the Transaction
24 Privilege Tax.

25 **F METER READING**

26 In violation of Commission regulations, Utility has regularly failed to read Swing First’s
27 meters, in one instance for the seven months dated April through November 2007.

⁶ Decision No. 64598, dated March 4, 2002, at 2.

1 **G BILLING**

2 As set forth above, Utility has failed to provide accurate bills to Swing First. Further,
3 past-due balances have suddenly appeared without explanation, even though all previous bills
4 were paid. As stated above, Utility has incorrectly calculated the applicable Superfund and
5 Transport Privilege Taxes. When Swing First has requested billing histories, the amounts shown
6 have not agreed with the bills rendered. Utility has been unable to explain charges and
7 calculations and has been forced to correct bills. Overall, Utility's customer billing service has
8 fallen far below the standards required by the Commission.

9 In addition, during 2006, at the demand of George Johnson, Utility changed Swing First's
10 billed rate for Exchange Water delivered from the CAP-water rate of \$0.83 (already \$0.21 above
11 the correct rate) to \$3.75, in violation of Commission's approved tariff rates. Billing continued
12 at this rate \$3.75 for approximately six months. Repeated requests by Swing First for Utility to
13 bill at its legal rates were ignored.

14 **H CUSTOMER SERVICE**

15 Utility's customer service has been abysmal. Swing First's attempts to resolve its billing
16 issues have been met with incompetence, broken promises, rudeness, and outright obscenities.

17 **I OPERATIONAL PRACTICES**

18 Over the weekend of February 1, 2008, Johnson Utilities over-delivered effluent to Swing
19 First, which caused the lake bordering the 18th hole to overflow, possibly damaging the golf
20 course. Swing First also cannot be expected to pay for effluent that it neither requested nor
21 required.

22 **J SERVICE INTERRUPTIONS**

23 In an effort to extort additional money from Swing First—and in violation of the
24 Commission's regulations—Utility cut off service to Swing First without notice twice in
25 November 2007. Only the intercession of the Commission Staff forced Utility to resume service.
26 Since that time, Utility has continually threatened to cut off service to Swing First.

1 **K COURT COMPLAINT**

2 This Commission is give Constitutional authority to determine the appropriate rates and
3 charges made by a Utility to its customers. As a regulated utility, Utility presumably is well
4 aware of the Commission's jurisdiction over rates and charges. Despite this—and Swing First's
5 repeated efforts to resolve its billing issues with Utility—Utility has filed a civil complaint in
6 Maricopa County Superior Court, alleging that Swing First has failed to pay its bills. Utility's
7 filing certainly appears to be in retaliation to Swing First's attempts to get a fair accounting of
8 what it actually owes – an accounting that Utility has so far been unable or unwilling to provide.

9 **III SUMMARY**

10 On Exhibit B, Swing First calculates the amounts it should have been charged for
11 Exchange Water by Utility and compares these amounts to its payments and its credit. For 2006
12 and 2007, Swing First overpaid Utility \$35,771.67. For 2004 and 2005, Swing First estimates
13 that it overpaid Utility an additional \$34,487.46. Therefore, since it has become a customer,
14 Swing First estimates that it has overpaid Utility more than \$70,000.

15 **IV REQUEST FOR RELIEF**

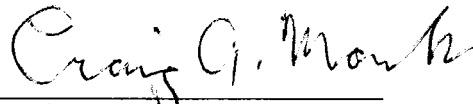
16 Swing First asks:

- 17 **A.** The Commission to order Utility to continue providing service during the pendency
18 of this matter;
- 19 **B.** The Commission to hold a hearing to determine the actual amount that Utility should
20 have charged Swing First over the period of November 2004 to the present, compare
21 this to amount Swing First has provided Utility during this period, and order Utility to
22 provide a refund to Swing First, together with appropriate interest;
- 23 **C.** The Commission order Utility to stop charging Swing First for the Superfund Tax;
- 24 **D.** The Commission to order Utility to render proper bills to Swing First each month,
25 based on actual meter reads, one 3-inch meter, the effluent rate of \$0.62 per thousand
26 gallons, and the Transaction Privilege tax of \$0.067 per thousand gallons;

1 E. The Commission to order Mr. George Johnson to personally apologize to Swing
2 First and its members for its abysmal customer service and for Mr. Johnson's abusive and
3 obscene language; and

4 F. For such further relief as the Commission deems appropriate.

5 RESPECTFULLY SUBMITTED on February 5, 2008.

6
7 
8

9
10 Craig A. Marks
11 Craig A. Marks, PLC
12 3420 E. Shea Blvd
13 Suite 200
14 Phoenix, Arizona 85028
15 (602) 953-5260
16 Craig.Marks@azbar.org
17 Attorney for Swing First Golf LLC

18 Original and 13 copies **filed**
19 on February 5, 2008, with:

20
21 Docket Control
22 Arizona Corporation Commission
23 1200 West Washington
24 Phoenix, Arizona 85007
25

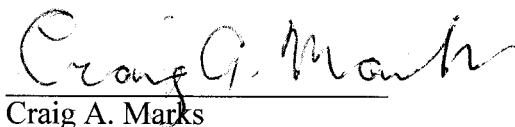
26 Copy of the foregoing **e-mailed**
27 on February 5, 2008, to:

28
29 Bradley Morton
30 Utilities Division
31 Arizona Corporation Commission
32 1200 West Washington St.
33 Phoenix, Arizona 85007
34

35 Copy of the foregoing **mailed**
36 on February 5, 2008, to:

37
38 Johnson Utilities, L.L.C.
39 5320 E. Shea Blvd., Suite 200
40 Scottsdale, Arizona 85254
41

42
43
44 By:

45 
Craig A. Marks

Swing First Golf LLC

Formal Complaint Against Johnson Utilities LLC

AGREEMENT REGARDING UTILITY SERVICE

THIS AGREEMENT REGARDING UTILITY SERVICE ("the Agreement") is made this 17 day of September, 1999, by and between JOHNSON RANCH HOLDINGS, L.L.C., an Arizona limited liability company ("Holdings"), GEORGE H. JOHNSON, in his capacity as Manager in Utility ("Johnson"), and GEORGE H. JOHNSON and JANA S. JOHNSON, as Co-Trustees of The George H. Johnson Revocable Trust dated July 9, 1987, in its capacity as sole Member in Utility (the "Trust"), and JOHNSON UTILITIES, L.L.C., an Arizona limited liability company ("Utility"), for the purposes and consideration set forth hereinafter.

RECITALS:

A. Concurrently with the execution of this Agreement, Holdings has acquired (or will acquire) from 1580 Santan Mountain, L.L.C., an Arizona limited liability company ("Santan"), and the Trust, all real property, tangible personal property, and intangible personal property associated with or relating to the approximately 2,014 acre master planned community known as Johnson Ranch, located in Pinal County, Arizona, between West Locklin Road (approximate northern boundary), Arizona Farms Road (approximate southern boundary), Gary Road/North Edwards Road (approximate western boundary), and Hunt Highway (approximate eastern boundary), as more particularly described in Exhibit A attached hereto and incorporated herein ("Johnson Ranch").

B. Utility has been organized by Johnson and the Trust for the purpose of providing water and wastewater utility services within Johnson Ranch and other real property in the vicinity of Johnson Ranch that may be developed in the future. Utility has applied for and obtained a decision from the Arizona Corporation Commission ("Commission") granting Utility a Certificate of Convenience and Necessity ("Certificate") to provide water and wastewater utility services to a geographic area that includes Johnson Ranch.

C. In connection with Holdings' acquisition of an interest in Johnson Ranch, Johnson and Utility have agreed to provide certain commitments and assurances to Holdings regarding the availability of water and wastewater services within Johnson Ranch.

D. The purpose of this Agreement is to set forth the respective commitments, representations and warranties made by Johnson and Utility to Holdings and Holdings' successors and assigns with respect to the provision of water and wastewater services to and within Johnson Ranch.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

COVENANTS AND AGREEMENTS:

1. Definitions.

(a) "Johnson" means George H. Johnson, in his capacity as Manager in Utility, and his successors and assigns.

(b) "Johnson Ranch Golf Courses" means the Championship Golf Course and the Precision Golf Course located in Johnson Ranch.

(c) "Existing Main Extension Agreement" means a written agreement between Johnson International, Inc. or Atlas Southwest Recreation Company and Utility for the extension of water and wastewater service and Central Arizona Project ("CAP") for water delivery to a particular portion of Johnson Ranch under which Johnson International, Inc. or Atlas Southwest Recreation Company installed On-Site Facilities to serve new service connections or, alternatively, agrees to install On-Site Facilities necessary to serve new service connections and CAP delivery facilities.

(d) "Main Extension Agreement" means a written agreement between an applicant for the extension of water and wastewater service and Utility under which the applicant for service agrees to advance to Utility the cost of installing On-Site Facilities to serve new service connections or, alternatively, agrees to install On-Site Facilities necessary to serve new service connections. Water Main Extension Agreements shall be submitted to and approved by the Utilities Division of the Commission and shall conform with the requirements of A.A.C. R14-2-406 (unless otherwise approved by the commission).

(e) "Off-Site Facilities" mean, with respect to water utility service, water production facilities (including wells and pumps), storage tanks and reservoirs, and treatment facilities, and shall also mean booster pumps, pressure tanks, transmission mains, and other improvements required to provide service if these facilities are not for the exclusive use of the applicant for water service. "Off-Site Facilities" mean, with respect to wastewater utility service, wastewater treatment plants and facilities, sludge collection and disposal facilities, effluent transportation and disposal facilities (including, but not limited to, pipelines and distribution systems within Johnson Ranch necessary to deliver effluent at the points of delivery at the Johnson Ranch Golf Courses), improvements and facilities necessary to comply with or required to be built under the Consent Order described in Paragraph 12(c), and any related plant and improvements, and shall also mean lift stations, force mains, trunk collection mains and related plant and improvements if these facilities are not for the exclusive use of the applicant for wastewater service.

(f) "On-Site Facilities" mean, with respect to water utility service, distribution mains, service lines, meters, hydrants, and any related valves, fittings and other appurtenances, and shall also mean booster pumps, pressure tanks, transmission mains and other improvements required to provide service provided that such facilities will be used exclusively by the applicant for service. "On-Site Facilities" mean, with respect to wastewater utility service, all collection

mains, service lines, manholes and other related appurtenances, and shall also mean lift stations, force mains, trunk collection mains and related plan and improvements provided that such facilities will be used exclusively by the applicant for service.

(g) "Holdings" means Johnson Ranch Holdings, L.L.C., an Arizona limited liability company, and its successors and assigns, and its members to the extent of their rights as third party beneficiaries, as provided in Paragraph 22, below.

2. Obligation to Furnish Utility Service. Utility, Johnson, and the Trust, and each of them, hereby covenant and agree that Utility will provide water and wastewater utility services to and within Johnson Ranch, and in connection therewith, further covenant and agree as follows:

(a) Timely Construction of Facilities. Water production, storage and transmission facilities will be constructed and placed in service as necessary to satisfy customer demand within Johnson Ranch, and wastewater collection, transmission, treatment and disposal facilities will be constructed and placed in service as necessary to properly treat and dispose of all wastewater generated within Johnson Ranch.

(b) Compliance. Utility will comply with all applicable laws, regulations, orders and other requirements relating to the design, installation, operation and maintenance of public water systems and wastewater collection and treatment systems, including (without limitation) the requirements of the Commission, the Arizona Department of Water Resources, the United States Environmental Protection Agency, the Arizona Department of Environmental Quality, and Pinal County.

3. Master Plan for Water and Wastewater Infrastructure.

(a) Contents of Master Plan. Utility shall prepare, revise and complete, at Utility's expense, a Master Plan concerning the water and wastewater infrastructure necessary to provide water and wastewater services within Johnson Ranch. The Master Plan will follow generally acceptable requirements for such Master Plan and include the following unless otherwise approved by Holdings: (i) the locations, sizing and intended design of all Off-Site Facilities and all major water transmission mains (diameter greater than 8 inches) and wastewater trunk collection mains, booster stations, lift stations and force mains; (ii) an analysis of water supply and demand; and (iii) an estimate of the timing of construction and dates on which the facilities will be placed in service, based on projected customer growth and the associated demand for utility services. All construction of utility plant and facilities within Johnson Ranch will be built to provide service within Johnson Ranch as and when set forth in the Master Plan.

(b) Timing of Initial Master Plan and Subsequent Amendment. The initial Master Plan for Johnson Ranch shall be prepared by Utility on or before ninety (90) days after the receipt of the absorption data referred to in this paragraph. Within ten (10) days after the close of the escrow that is established in connection with Holdings' acquisition of its interest in Johnson Ranch, Holdings shall provide Utility with a schedule indicating, to the best of Holdings' knowledge, the projected development schedule for Johnson Ranch, including the

numbers and types of residential units expected to be constructed, any commercial and industrial development, the phasing of development within Johnson Ranch, and the estimated number of units constructed annually until build-out is reached. Holdings shall thereafter provide Utility updated projections on or before September 1 of each succeeding calendar year through build-out, commencing September 1, 2000. Utility shall prepare a revised Master Plan on or before December 1 of each succeeding calendar year, beginning December 1, 2000, based on the schedule provided annually by Holdings. The foregoing notwithstanding, Utility shall immediately prepare a revised Master Plan in the event that Utility extends service to any residential subdivision project or commercial or industrial customer situated outside of Johnson Ranch that may require Utility to utilize any of the Off-Site Facilities intended to be utilized for utility service within Johnson Ranch.

(c) Review and Comment on Master Plan. The initial Master Plan and all subsequent revisions to the Master Plan shall be provided to Holdings for review.

4. Obligation to Construct Facilities. Utility shall be responsible for the construction of all Off-Site Facilities necessary to provide water and wastewater services within Johnson Ranch, including all engineering and design services and all construction management and oversight services. Funding for the construction of Off-Site Facilities shall be provided by Utility, and shall be obtained by means of capital contributions, debt financing, internally generated funds or hook-up fees (which are more particularly described below); under no circumstances shall real estate developers and builders within Johnson Ranch be required to advance or contribute funds in aid of the construction of any Off-Site Facilities, except as provided in Paragraph 6 below. All On-Site Facilities within Johnson Ranch shall be constructed pursuant to Main Extension Agreements made with the utility and real estate developers, builders and other persons requesting the extension of utility service

5. Existing Main Extension Agreements.

(a) Parcels 2, 3A, 3B and 4A. Johnson and Utility represent and warrant that the On-Site Facilities for Parcels 2, 3A, 3B and 4A at Johnson Ranch necessary to provide water and wastewater services to these Parcels, and CAP water delivery facilities for the Johnson Ranch Golf Courses, have been installed and the Utility has accepted them for maintenance. The Existing Main Extension Agreements for Parcels 2, 3A, 3B and 4A and the Johnson Ranch Golf Courses and the provisions of those Existing Main Extension Agreements with regard to refunds or reimbursements shall not be affected by this Agreement.

(b) Future Parcels. Main Extension Agreements for all Parcels at Johnson Ranch not referenced in Paragraph 5(a) above shall be entered into between the developer of each such parcel and the Utility.

6. Hook-Up Fees. Holdings has been advised that Utility has obtained authorization to collect certain fees, known as hook-up fees, from applicants for water and wastewater service. Utility's current hook-up fees are set forth in Utility's tariff schedule, issued May 30, 1997, and effective June 30, 1997, on file with the Commission. Notwithstanding the terms and conditions

set forth in Utility's tariff schedules, with respect to all subdivisions containing more than fifty (50) developable lots, hook-up fees shall be due and payable in two or more installments. Each installment payment shall be based on the hook-up fees for water and wastewater services set forth in Utility's then current tariff schedule multiplied by fifty (50), except that the final installment payment shall be based on the remaining number of lots in the subdivision for which hook-up fees have not yet been paid. Installments of hook-up fees so paid shall be applied as a credit against the hook-up fees payable for individual lots in the subdivision as hereinafter provided. The initial installment payment shall be due on or before ten (10) days from the date on which the Main Extension Agreement providing for the construction of the subdivision's On-Site Facilities has been executed. Execution of the Main Extension Agreement shall not be a condition to approval of the final plat by the Utility; provided, however, that if a Main Extension Agreement has not been entered into at the time of approval of such final plat by the Utility, such final plat will contain a disclosure that execution of a Main Extension Agreement is required as a condition to service by the Utility. Subsequent installments for each additional increment of lots shall be due and payable when the credits for forty (40) lots of the current fifty (50) lot installment (and the credits for all fifty (50) lots in all prior installments) have been used. A credit must be used for a lot immediately upon the occurrence of the first of any of the following with respect to the lot: 1) issuance of a building permit or breaking ground for construction on the lot, 2) use of water on the lot, or 3) request to install a meter on the lot. Otherwise, credits shall be used on lots as designated by the developer. The third installment of fifty (50) lots would not be due until credits for all fifty (50) lots in the first installment and forty (40) lots in the second installment were used as provided above. With respect to lots or parcels other than subdivisions subject to the above provisions of this paragraph, no vertical construction shall be commenced prior to payment of the applicable hook-up fees for that lot or parcel. Utility represents that the payment of hook-up fees in the manner provided herein for new water and wastewater services in subdivision projects containing greater than fifty (50) lots is permitted under Utility's current tariff schedules. In the event the Commission repeals or disallows Utility's authority to assess the hook-up fees under the tariff, it is agreed that developers and builders within Johnson Ranch will enter into agreements with Utility for Off-Site Facilities required to serve their parcel. Under such agreements, the developer or builder will provide funds not to exceed an amount equal to the existing hook-up fees in effect at the time of such repeal or disallowance by the Commission.

7. Annual Reports on Financial Condition; Loans.

(a) Annual Report. On or before May 1 of each calendar year during which this Agreement is in effect, commencing May 1, 2000, Utility shall provide Holdings with complete copies of its annual reports filed with the Utilities Division of the Commission.

(b) Anticipated Shortfall. Utility shall promptly advise Holdings, in writing, of any anticipated shortfall in revenues, the unavailability of funding for the construction of planned Off-Site Facilities, or any other financial or regulatory difficulty that may prevent Utility from completing any Off-Site Facilities in accordance with the Johnson Ranch Master Plan prepared and revised in accordance with Paragraph 3, above, or may otherwise affect Utility's ability to provide any utility service as required hereunder. Such notice shall be in writing,

contain a description of the circumstances that have caused, or may cause, the difficulty, and describe the actions Utility intends to take to remedy the difficulty.

(c) Right to Loan Funds. Holdings may furnish funds to the Trust (in its capacity as Member in Utility) or to George H. Johnson (in his capacity as Manager in Utility), at such times and in such amounts as may be deemed appropriate by Holdings, for the sole purpose of providing financing to Utility to fund the construction of water and wastewater facilities, to provide working capital to Utility or as may be otherwise required in order for Utility to provide water and wastewater services to and within Johnson Ranch. All funds provided by Holdings to the Trust and/or George H. Johnson hereunder shall constitute a loan by Holdings to Johnson and the Trust that Johnson and the Trust (jointly and severally) shall be obligated to repay. All amounts loaned by Holdings to the Trust and/or George H. Johnson as provided herein shall bear interest at the rate of twelve percent (12%) per annum (compound interest) until such time as the entire principal balance of the loan has been repaid. Loans made by Holdings hereunder shall (i) be evidenced by a promissory note or similar debt instrument, the terms of which are consistent with this Agreement, but in any case will require monthly payments of not less than \$50,000, (ii) be subject to set-off in accordance with Paragraph 7(f), and (iii) be secured by the membership interest of Santan in Holdings as provided in Section 3.7 of the Operating Agreement of Johnson Ranch Holdings, L.L.C. The foregoing notwithstanding, the failure of the Trust and/or Johnson to execute a promissory note or other instruments relating to any loan made by Holdings shall not terminate or otherwise modify the obligations of the Trust and Johnson hereunder.

(d) Use of Loan Proceeds. All funds provided to the Trust and/or George H. Johnson pursuant to this Paragraph 7 shall be immediately transferred by the Trust (or Johnson, as applicable) to Utility. The terms under which the Trust and/or Johnson provides the funds to Utility shall be determined by Johnson, in Johnson's sole discretion, provided, however, that the Trust, Johnson and Utility shall obtain all required approvals and authorizations. Utility covenants and agrees to use the proceeds of all loans made by Holdings pursuant to this Paragraph 7 solely for the construction of Off-Site Facilities or as may be otherwise necessary to pay operating expenses and ensure the continuation of utilities services to and within Johnson Ranch. Johnson and the Trust shall promptly provide Holdings with appropriate documentation evidencing the transfer of the loan proceeds to Utility, demonstrating that any required approvals and authorizations have been obtained, and demonstrating the manner in which the loan proceeds have been utilized by Utility.

(e) No Obligation. The intent of this Paragraph 7 is to provide a means by which Holdings may provide financing for the construction of water and wastewater facilities by Utility and to ensure that Utility has sufficient funds to fulfill its obligations hereunder. Nothing contained in this Agreement shall require Holdings to loan or otherwise provide funds to the Trust or Johnson in order to provide financing for the construction of any Off-Site Facilities or other activities by the Utility.

(f) Holdings' Right of Set-Off. In addition to any and all rights granted to Holdings under the Operating Agreement of Johnson Ranch Holdings, L.L.C., and/or otherwise existing at law or in equity, Holdings is granted the right to set-off all amounts loaned to the

Trust and/or Johnson hereunder (including any accrued and unpaid interest relating to any such loan) in accordance with the provisions of Section 3.2 of the Operating Agreement of Johnson Ranch Holdings, L.L.C., provided that (i) the amount that Holdings is entitled to set-off in any month shall not exceed the monthly payment due in that month under the promissory note described in Paragraph 7(c), and (ii) amounts so set-off shall be applied to reduce the outstanding balance of such promissory note. The exercise of Holdings' right of set-off will not prevent Holdings from exercising any other rights or remedies that may be available to Holdings under the Operating Agreement of Johnson Ranch Holdings, L.L.C. or otherwise in the event of a breach or default by Johnson or any other party to this Agreement.

8. Reports and Notices. Commencing at closing of the Contribution Agreement through December 31, 2006, ~~upon~~ ²⁰⁰⁵⁻²⁰⁰⁶ written request by Holdings, Utility will promptly provide Holdings with copies of all reports, filings and submittals pertinent to the provision of water or waste water service within Johnson Ranch made by or on behalf of Utility with regulatory agencies having jurisdiction over Utility's operations. Utility shall also provide notice to Holdings of any filings by Utility with the Commission involving a change in any rate, fee or charge, or any other term or condition relating to water or wastewater services provided by Utility within Johnson Ranch. Holdings may, upon approval of the appropriate regulatory authority, participate in any proceeding relating to Utility before the Commission or any other regulatory body that may have affect on, or otherwise relate to, the provision of water or wastewater services within Johnson Ranch. In addition, Johnson and Utility will notify Holdings within five (5) business days upon learning of any situation that could, in their best professional judgment, impair the ability of the Utility to provide adequate water and wastewater services as provided in this Agreement.

9. Delivery of Effluent.

(a) Right to Purchase Effluent. Utility hereby grants Holdings and its successors and assigns the right to purchase the first effluent generated by Utility's treatment of wastewater collected within the geographic area covered by Utility's Certificate, or Exchange Water (as hereinafter defined), in an amount required to irrigate the Johnson Ranch Golf Courses. The quantity of effluent that may be purchased annually with respect to the Johnson Ranch Golf Courses shall not exceed the annual allotments for turf-irrigation established for each golf course by the Arizona Department of Water Resources.

(b) Purchase Price for Effluent. The purchase price for effluent sold to Holdings hereunder shall be as determined by the Commission.

(c) Exchange Water Deliveries. Utility reserves the right to deliver the quantities of water that Holdings elects to purchase pursuant to Paragraph 9(a) from any of the following sources: (i) effluent from any wastewater treatment plant of Utility, (ii) any surface water available to Utility, or (iii) groundwater (the foregoing items (i), (ii) and (iii) being hereinafter referred to as "Exchange Water"). Election of such sources shall be at the sole discretion of Utility.

(d) Construction of Facilities. Utility shall construct, at no cost to Holdings, sufficient Off-Site Facilities to allow the transportation and delivery of effluent from Utility's wastewater treatment plants or Exchange Water to the Johnson Ranch Golf Courses.

(e) Minimum Monthly Purchases. Holdings shall be obligated to purchase and accept, on a monthly basis, no less than one-third of the effluent generated from the geographic area of Johnson Ranch, or an equivalent amount of Exchange Water, provided, however, (i) that in no event shall Holdings be required to accept more effluent than can be used on the Johnson Ranch Golf Courses under the applicable use permit, and (ii) that Holdings may reduce or eliminate such obligation by providing Utility notice of such reduction no less than 18 months prior to the first month in which Holdings no longer elects to take such deliveries.

(f) Re-Use Permits. Utility shall be solely responsible for obtaining, maintaining and renewing all permits and other regulatory approvals required for the use of effluent for turf irrigation and other non-potable uses. Holdings hereby agrees to cooperate with Utility in obtaining, maintaining and renewing said permits and approvals. Holdings covenants and agrees to comply with the terms of such permits and to otherwise accept and use effluent delivered by Utility in accordance with all applicable laws, regulations, orders, standards and requirements.

10. CAP Water.

(a) Existing Agreements. Santan and Central Arizona Water Conservation District ("CAWCD") have entered into that certain agreement dated March 21, 1997 entitled "Agreement between the Central Arizona Water Conservation District and 1580 Santan Mountain, L.L.C., providing for the Delivery of Excess Central Arizona Project Water," (the "CAP Agreement"), wherein CAWCD has agreed to provide CAP water to the Johnson Ranch Golf Courses. Santan also has entered into a water delivery agreement with New Magma Irrigation and Drainage District ("New Magma") dated April 17, 1997 to deliver water from the CAP canal through New Magma's canal system to a point of delivery identified in the water delivery agreement. From this point of delivery, CAP water is transported to Johnson Ranch Golf Courses by way of pipelines owned and operated by Utility (the "Existing CAP Transportation Lines"). Utility has been issued a tariff by the Commission authorizing it to charge a fee for transporting the CAP water from the point of delivery to the location of use.

(b) Right to Purchase and Delivery of CAP Water. Until terminated pursuant to subparagraph (c) below, Santan and Utility, respectively, hereby grant to Holdings and its successors and assigns the right to purchase CAP water under the CAP Agreement and delivery of such CAP water by Utility in accordance with Utility's tariff therefor, in such quantity as determined by Holdings for irrigation of the Johnson Ranch Golf Courses (but in no event more than the amount of CAP water made available from time to time by CAWCD under the CAP Agreement). Santan shall take such actions as are necessary to secure CAWCD approval for the resale of CAP water to Holdings. Such actions shall be taken in an expeditious manner, so as to avoid the disruption of water delivery to the Johnson Ranch Golf Courses.

(c) Separate Agreements. Utility shall have the right, upon at least 60 days' prior written notice to Holdings, to require Holdings to enter into (a) a separate contract with CAWCD for delivery of excess CAP water; and (b) a separate contract with New Magma to deliver CAP water from the CAP canal through New Magma's canal system. Utility hereby agrees to cooperate with Holdings in obtaining such separate contracts. Upon the execution of such separate contracts, (i) the obligation of Utility to sell CAP water pursuant to subparagraph (b) above shall terminate, and (ii) Utility shall allow Holdings to use the Existing CAP Transportation Lines for the delivery of CAP water to the Johnson Ranch Golf Courses for a charge consistent with Utility's tariff; provided, however, that such charge shall only include amounts relating to the use of the Existing CAP Transportation Lines (and not any amounts relating to the cost of or charges for CAP water and/or the transportation of CAP water through New Magma's canal system or other delivery systems). If separate contracts are entered into as provided above, then Holdings shall supply to Utility on a monthly basis copies of the CAWCD and New Magma billings for Utility's preparation of its tariff charges to Holdings.

11. Authorizations. Utility, at its own expense and on a timely basis, shall take all steps necessary to obtain, maintain and renew any authorizations and approvals that may be necessary to allow Utility to provide water and wastewater utility services to and within Johnson Ranch and to otherwise fulfill its obligations under this Agreement. Holdings shall cooperate with and assist Utility, upon Utility's written request and as may be reasonably required, in obtaining and renewing any such approvals or authorizations.

12. Representations and Warranties of Johnson and Utility. In addition to any other express covenants and agreements made by Johnson or Utility herein, Johnson and Utility, and each of them, hereby represents, warrants and covenants (with the understanding that Holdings is relying on such representations, warranties and covenants) as to each of the matters set forth below:

(a) No Actions. Except as provided on Exhibit B, there are no (i) claims, actions, suits, condemnation actions or other proceedings pending or, to the actual knowledge of Johnson or Utility, threatened by any entity arising out of or relating to the provision of water or wastewater services by Utility, (ii) authorizations, approvals, permits, licenses, franchises or rights that have been denied, or to the actual knowledge of Johnson or Utility, may be denied, by any governmental body, department or agency that would affect Utility's ability to provide water or wastewater services, (iii) violations of any law, statute, regulation, order or requirement that will affect the provision of water or wastewater services by Utility or otherwise interfere with the performance of any duty or obligation hereunder; and (iv) existing defaults under any agreement or contract made by Johnson or Utility that relate to the subject matter of this Agreement or would interfere with the performance of this Agreement.

(b) Authority to Bind. Johnson, the Trust, Santan, and Utility, and each of them, represent and warrant that they have full power and authority to enter into and perform this Agreement in accordance with its terms. The individuals signing this Agreement on behalf of Utility, Santan and the Trust are duly authorized to do so. Upon signing this Agreement, this Agreement shall be binding and enforceable upon Utility, the Trust, Santan and Johnson in

accordance with its terms, and will not violate any other agreement, contract or undertaking to which either Johnson, the Trust, Santan or Utility are subject.

(c) Consent Order. Utility is currently in compliance with and will continue to comply with and timely perform the terms, conditions and requirements set forth in the Consent Order, issued May 12, 1999, by the Arizona Department of Environmental Quality in Docket No. E-105-99.

(d) Assured Water Supply Designation. Johnson and Utility shall use their best efforts to obtain the Assured Water Supply Designation from the ADWR for the Utility's Service Area.

13. Notices. Except as otherwise required by law, any notice required or permitted under this Agreement must be in writing and must be given by either: (i) personal delivery; (ii) United States certified mail, return-receipt requested, with all postage prepaid and properly addressed; (iii) any reputable, private overnight delivery service with delivery charges prepaid and proof of receipt; or (iv) by facsimile machine or telecopier. Notice sent by any of the following methods must be addressed or sent to the party to whom notice is to be given, as the case may be, at the addresses or telecopy numbers set forth below:

Holdings:

SUNBELT HOLDINGS MANAGEMENT INC.
6720 North Scottsdale Road, Suite 160
Scottsdale, Arizona 85253
Attention: John Graham or Curt Smith
Facsimile: (480) 905-1419

Johnson:

JOHNSON INTERNATIONAL INC.
5230 East Shea Boulevard
Scottsdale, Arizona 85254
Attention: George H. Johnson
Facsimile: (480) 473-7908

Utility:

JOHNSON UTILITIES
5230 East Shea Boulevard
Scottsdale, Arizona 85254
Attention: George H. Johnson
Facsimile: (480) 473-7908

Any party may change its address or telecopy number for the purposes of delivery and receipt of notices by advising the other parties in writing of the change. Notice provided by the methods described above will be deemed to be received: (i) on the day of delivery, if personally delivered; (ii) on the date which is three (3) days after deposit in the United States mail, if given

by certified mail; (iii) on the next regular business day after deposit with an express delivery service for overnight, "same day", or "next day" delivery service; or (iv) on the date of transmittal, if given on a regular business day and during regular business hours by facsimile machine or telecopy. No notice will be effective unless provided by one of the methods described above.

14. Severability. In the event that any provision of this Agreement or portion thereof is held by an arbitrator(s) to be unenforceable or invalid, the validity and enforceability of the enforceable portion of any such provision and of the remaining provisions shall not be adversely affected.

15. Force Majeure. If Johnson or Utility shall be unable, in whole or in part, by reason of "force majeure" to carry out any obligation under this Agreement, the performance of such obligation, to the extent and during the time that it is so affected, shall be suspended. As used in this provision, the term "force majeure" shall mean any act of God, breakdown or destruction of any well, treatment plant, or other equipment that is part of the Off-Site Facilities, shortage of or inability to secure power, materials or labor, delay in transportation, strike, lock-out or other labor dispute, war, flood, earthquake, blockade, riot, accident, lightning, fire, explosion, epidemic, quarantine restriction, or any other cause which is beyond the control of Utility. Utility shall immediately give written notice to Holdings of any suspension of performance hereunder, stating therein the nature of the suspension and the reason therefor, shall resume performance hereunder as soon as possible and shall immediately provide written notice to Holdings of such resumption of performance.

16. Joint and Several Obligations. The duties, obligations and undertakings of Johnson, the Trust, Santan and Utility pursuant to this Agreement shall be joint and several obligations of each of them. In the event of the insolvency, bankruptcy or other disability of either Johnson, the Trust, Santan or Utility, the remaining party (or parties) shall remain responsible for the performance of the duties and obligations of Johnson, Santan, the Trust and Utility hereunder.

17. Attorneys' Fees. In the event any party hereto finds it necessary to employ legal counsel or to bring an action at law, or other proceeding against the other party to enforce any of the terms, covenants or conditions hereof, the prevailing party in such action or proceeding shall be paid its reasonable attorneys' fees and costs, and in the event any judgment is secured by such prevailing party, all such attorneys' fees and costs shall be included in such judgment. Any arbitration or other dispute resolution proceeding shall be considered a proceeding for the purposes of this paragraph.

18. Waiver of Conditions; Amendment. No waiver by any party of any breach of this Agreement by another party shall be construed as a waiver of any preceding or succeeding breach. This Agreement may be amended or modified only in writing and may not be amended or modified by any part performance, reliance or course of dealing.

19. Additional Acts. The parties agree to execute promptly any other documents and to perform promptly any other acts as may be reasonably required to effectuate the purposes and intent of this Agreement.

20. Default; Remedies.

(a) Service Related. Holdings' remedies for default by Utility of any service related duty or obligation shall be obtained from the Commission and other applicable government agencies pursuant to the applicable agencies rules and regulations. If Holdings is not satisfied in its sole discretion, with the remedies provided by the Commission or applicable government agencies, Holdings shall have the right at its sole option to pursue the matter further through the appropriate court of law.

(b) Non-Service Related. If either party fails to perform any non service related duty or obligation required hereunder, then the party not performing shall be in default. If commencement to cure such default is not started within three (3) days and such default is not cured within ten (10) days after the other party has given written notice of the existence of such default, then the non defaulting may initiate an arbitration proceeding in accordance with the terms and procedures set forth in Section 3.5 of the Operating Agreement of Johnson Ranch Holdings, L.L.C. which provisions are incorporated herein by this reference, and/or pursue any other rights or remedies that may be available to Holdings in connection with such default.

21. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. Neither Johnson, nor the Trust, nor Utility can assign its interests hereunder without the written consent of Holdings. If either the Trust, Santan, Johnson or Utility assigns its interests hereunder, such assignment shall be set forth in a written document executed by the assignor and assignee, which document shall contain an express assumption by the assignee of all obligations of the assignor under this Agreement. No assignment shall relieve Santan, the Trust, Johnson or Utility from any liability hereunder unless such relief is specifically consented to Holdings. Further, neither the Trust nor Johnson shall assign, transfer or encumber their rights and interest as sole Member or Manager, respectively, of Utility without the prior written consent of Holdings and, in addition, only if the assignee agrees to be bound by and fully perform all obligations of Johnson, the Trust, Santan and Utility hereunder. Neither Utility, the Trust nor Johnson shall assign, encumber or transfer all or substantially all of the assets of Utility unless such assignment, encumbrance or transfer is specifically made subject to this Agreement. The foregoing notwithstanding, no assignment or transfer shall terminate or otherwise limit Holdings' right of set-off, as more particularly provided in subparagraph 7(f), above, or operate to relieve any party from any liability hereunder.

22. Third Party Beneficiaries. The current members of Holdings and their successors and assigns, except Santan, are intended to be third beneficiaries of this Agreement. Without limiting the foregoing, each member shall have the right to take any action deemed necessary or appropriate to ensure the performance of any duty or obligation of Johnson or Utility hereunder in the event that Holdings, for whatever reason, fails or refuses to act, and to recover an award of

damages in the event of any breach of this Agreement by Johnson or Utility with respect to which Holdings is not fully compensated.

23. Governing Law. This Agreement is governed by and construed and enforced in accordance with the laws of the State of Arizona.

24. Construction. The terms and provisions of this Agreement represent the results of negotiations between the parties, none of which have acted under any duress or compulsion, whether legal, economic or otherwise. Each party has had the full opportunity to review and understand the legal consequences of this Agreement. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meaning, and each party waives the application of any rule of law which states that ambiguous or conflicting terms or provisions are to be interpreted or construed against the party whose attorney prepared this Agreement.

25. Interpretation. The terms of this Agreement supersede all prior and contemporaneous oral or written agreements and understandings with respect to its subject matter, all of which are deemed to be merged into this Agreement. This Agreement is a final and complete integration of the understandings of the parties with respect to the subject matter hereof. If there is any specific and direct conflict between, or any ambiguity resulting from, the terms and provisions of this Agreement and the terms and provisions of any document, instrument, letter or other agreement executed in connection with or furtherance of this Agreement, the term, provision, document, instrument, letter or other agreement will be interpreted in a manner consistent with the general purpose and intent of this Agreement.

26. Headings and Captions. The headings and captions of this Agreement are for reference only and are not intended to limit or define the meaning of any provision of this Agreement. The headings and captions may not give full notice of all of the terms, agreements, covenants and conditions contained in any portion of this Agreement.

27. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, but all of which when taken together would constitute one binding contract and instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement Regarding Utility Service to be executed as of the day and year first above written.

JOHNSON RANCH HOLDINGS, L.L.C., an Arizona limited liability company

By: JOHNSON RANCH ASSOCIATES, LLC., a Delaware limited liability company, its Manager

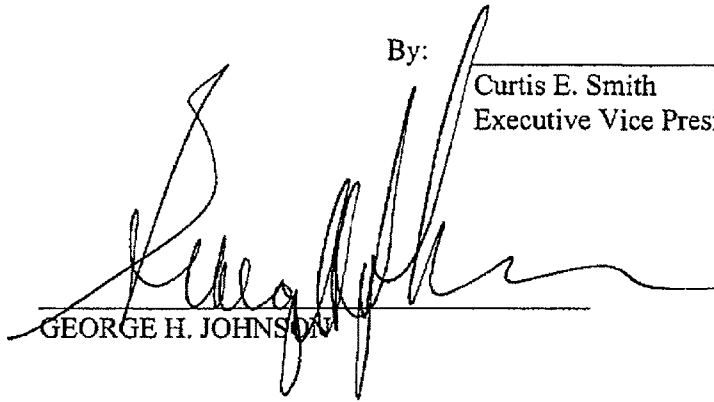
By: SUNBELT J/R MANAGEMENT L.L.C., an Arizona limited liability company, its Managing Member

By: SUNBELT HOLDINGS IV L.L.C., an Arizona limited liability company, its Manager

By: SUNBELT HOLDINGS MANAGEMENT, INC., an Arizona corporation, its Manager

By:

Curtis E. Smith
Executive Vice President



GEORGE H. JOHNSON

The undersigned spouse of George H. Johnson hereby consents to this Agreement and agrees to be bound hereby:



JANA S. JOHNSON

IN WITNESS WHEREOF, the parties have caused this Agreement Regarding Utility Service to be executed as of the day and year first above written.

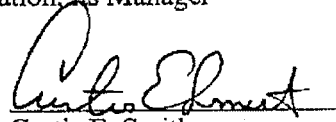
JOHNSON RANCH HOLDINGS, L.L.C., an Arizona limited liability company

By: JOHNSON RANCH ASSOCIATES, LLC., a Delaware limited liability company, its Manager

By: SUNBELT J/R MANAGEMENT L.L.C., an Arizona limited liability company, its Managing Member

By: SUNBELT HOLDINGS IV L.L.C., an Arizona limited liability company, its Manager

By: SUNBELT HOLDINGS MANAGEMENT, INC., an Arizona corporation, its Manager

By: 
Curtis E. Smith
Executive Vice President

GEORGE H. JOHNSON

The undersigned spouse of George H. Johnson hereby consents to this Agreement and agrees to be bound hereby:

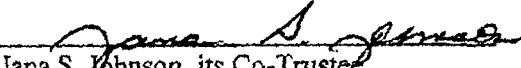
JANA S. JOHNSON

THE GEORGE H. JOHNSON REVOCABLE TRUST DATED
JULY 9, 1987

By:


George H. Johnson, its Co-Trustee

By:


Jana S. Johnson, its Co-Trustee


JOHNSON UTILITIES, L.L.C., an Arizona limited liability
company

By: The George H. Johnson Revocable Trust Dated July 9,
1987, its Member

By:


George H. Johnson, its Co-Trustee

By:

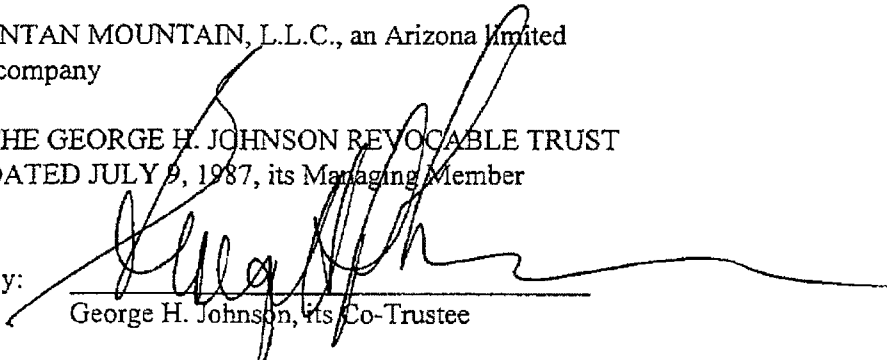

Jana S. Johnson, its Co-Trustee

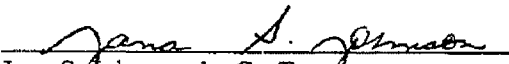
CONSENT AND AGREEMENT:

The undersigned hereby (a) consents and agrees to be bound by the provisions of Paragraphs 7(c), 7(f), 10(b), and 12(b) of this Agreement, and (b) agrees that this Agreement will directly or indirectly benefit the undersigned, and that Holdings would not consummate the transactions described in the Recital A of this Agreement without the execution of this Agreement by the undersigned.

1580 SANTAN MOUNTAIN, L.L.C., an Arizona limited liability company

By: THE GEORGE H. JOHNSON REVOCABLE TRUST
DATED JULY 9, 1987, its Managing Member

By: 
George H. Johnson, its Co-Trustee

By: 
Jana S. Johnson, its Co-Trustee

Swing First Golf LLC
Formal Complaint Against Johnson Utilities LLC
Docket No. WS-02987A-08-0049

	CAP Meter	Effluent Meter	Total Usage	Volumetric Charge at Effluent Rate	Minimum Bill (3-in. meter)	Superfund Assessment	Transaction Privilege Tax	Correct Bills	Payments	Total Payments
Jan-06	6,214,000		6,214,000 \$	3,852.68 \$	270.00 \$	40.39 \$	272.10 \$	4,435.17		
Feb-06	6,638,000		6,638,000 \$	4,115.56 \$	270.00 \$	43.15 \$	289.45 \$	4,718.15		
Mar-06	0	11,886,000	11,886,000 \$	7,369.32 \$	270.00 \$	77.26 \$	504.20 \$	8,220.77	6,266.60	
Apr-06	1,061,000	5,841,000	6,902,000 \$	4,279.24 \$	270.00 \$	44.86 \$	300.25 \$	4,894.35	6,860.16	
May-06	8,415,000	10,646,000	19,061,000 \$	11,817.82 \$	270.00 \$	123.90 \$	797.80 \$	13,009.51	12,245.00	
Jun-06	11,956,000	11,352,000	23,308,000 \$	14,450.96 \$	270.00 \$	151.50 \$	971.58 \$	15,844.05		
Jul-06	12,052,000	9,744,000	21,796,000 \$	13,513.52 \$	270.00 \$	141.67 \$	909.71 \$	14,834.91		
Aug-06	9,358,000	11,647,000	21,005,000 \$	13,023.10 \$	270.00 \$	136.53 \$	877.34 \$	14,306.98		
Sep-06	11,059,000	3,889,000	14,948,000 \$	9,267.76 \$	270.00 \$	97.16 \$	629.49 \$	10,264.41		
Oct-06	4,152,000	6,052,000	10,204,000 \$	6,326.48 \$	270.00 \$	66.33 \$	435.37 \$	7,098.17		
Nov-06	5,266,000	7,788,000	13,054,000 \$	8,093.48 \$	270.00 \$	84.85 \$	551.99 \$	9,000.32	5,313.32	
Dec-06	8,167,000	15,407,000	23,574,000 \$	14,615.88 \$	270.00 \$	153.23 \$	982.47 \$	16,021.58	8,400.00	
2006 Total			178,590,000 \$	110,725.80 \$	3,240.00 \$	1,160.84 \$	7,521.74 \$	122,648.38		\$ 39,085.08
Jan-07	744,000	2,161,000	2,905,000 \$	1,801.10 \$	270.00 \$	18.88 \$	136.69 \$	2,226.68	5,000.00	
Feb-07	0	1,404,000	1,404,000 \$	870.48 \$	270.00 \$	9.13 \$	75.27 \$	1,224.88	4,200.00	
Mar-07	0	0	0 \$	- \$	270.00 \$	- \$	17.82 \$	287.82	5,200.00	
Apr-07	3,374,000	322,000	3,696,000 \$	2,291.52 \$	270.00 \$	24.02 \$	169.06 \$	2,754.60	6,600.00	
May-07	0	0	0 \$	- \$	270.00 \$	- \$	17.82 \$	287.82	8,200.00	
Jun-07	21,073,000	0	21,073,000 \$	13,065.26 \$	270.00 \$	136.97 \$	880.13 \$	14,352.36	8,200.00	
Jul-07	13,521,000	0	13,521,000 \$	8,383.02 \$	270.00 \$	87.89 \$	571.10 \$	9,312.01	10,500.00	
Aug-07	8,794,000	0	8,794,000 \$	5,452.28 \$	270.00 \$	57.16 \$	377.67 \$	6,157.11	11,000.00	
Sep-07	11,043,000	0	11,043,000 \$	6,846.66 \$	270.00 \$	71.78 \$	469.70 \$	7,658.14	10,000.00	
Oct-07	3,007,000	0	3,007,000 \$	1,864.34 \$	270.00 \$	19.55 \$	143.00 \$	2,296.89	19,300.00	
Nov-07	6,565,000	5,189,000	11,754,000 \$	7,287.48 \$	270.00 \$	76.40 \$	506.35 \$	8,140.23	35,625.00	
Dec-07		1,848,000	1,848,000 \$	1,145.76 \$	270.00 \$	12.01 \$	94.86 \$	1,522.63		
2007 Total			79,045,000 \$	49,007.90 \$	3,240.00 \$	513.79 \$	3,459.47 \$	56,221.16		\$ 123,825.00
2006-07	152,459,000	105,176,000	257,635,000			\$ 1,674.63				
Average Monthly Usage: 2006-07			10,734,792							
Value of Billing Credit (Computed at Effluent Rate)			75,000,000 \$	46,500.00		\$ 487.50	\$ 3,069.00			\$ 50,056.50

Notes:

Volumetric Rate \$0.62/1000 gal.
Superfund Tax \$0.0065/1000 gal.
Transaction Privilege Tax
Until 10/07 0.066 * (monthly volumetric charge + monthly minimum bill)
After 10/07 0.067 * (monthly volumetric charge + monthly minimum bill)

2006 - 2007 Overpayment

Payments and Credits	2006	\$	39,085.08	
	2007	\$	123,825.00	
Billing Credit		\$	50,056.50	
Credit for Illegal Superfund Tax		\$	1,674.63	
Total Payments and Credits				\$ 214,641.21
Correct 2006-2007 Charges	2006	\$	122,648.38	
	2007	\$	56,221.16	
Total Charges				\$ 178,869.54
Net 2006-2007 Overpayment				\$ 35,771.67

2004 - 2005 Estimated Overpayment

Correct Monthly Charges		Usage	Volumetric Charge at Effluent Rate	Minimum Bill (3-in. meter)	Transaction Privilege Tax	Correct Bills
		10,734,792	\$ 6,655.57	\$ 270.00	\$ 457.09	\$ 7,382.66
Actual Monthly Payments						\$ 10,035.54
(In 2004/2005 JU did not read meters and based monthly bills on 1/12 of previous year's total usage)						
Total Monthly Payments						\$ 2,652.88
Total Monthly Overpayments						\$ 34,487.46
Total Overpayments: 12/04 through 12/05 (13 months)						